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December 8, 2004

Honorable Kathleen Sheehy
Administrative Law Judge
Office of Administrative Hearings
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

Re: Site Permit for Large Electric Power Generating Plant
EQB Docket No. 04-85-PPS-Cannon Falls EC
OAH Docket No. 3-2901-16230-2

Dear Judge Sheehy:

On December 1, 2004, you conducted a public hearing in Cannon Falls, Minnesota, on the application by Invenergy Cannon Falls, LLC, for a Site Permit from the Minnesota Environmental Quality Board for a 357 megawatt simple cycle natural gas-fired peaking plant. You announced that the record would remain open until December 13, 2004, for the submission of written comments.

It has been the EQB staff's practice at the close of the hearing in other permit proceedings on proposed large energy facilities to submit comments to the administrative law judge for consideration in preparing the final report and recommendation. Many of the comments made below are similar to the comments staff has filed in other proceedings on large power plants, including the Xcel Energy's Blue Lake Plant in Scott County, EQB Docket No. 04-75-PPS-Xcel (presided over by Chief Judge Krause) and the Mankato Energy Center project near Mankato, EQB Docket No. 04-76-PPS-Calpine Mankato (presided over by Judge Klein). EQB staff has also filed similar comments in permit proceedings on new transmission lines. These transmission line proceedings include the 115 kV GRE line in Hennepin County that you presided over, EQB Docket No. 03-65-TR-GRE PMG, and the 161 kV Lakefield Junction transmission line, EQB Docket No. 03-64-TR-XCEL, and the Air Lake line in Dakota County, EQB Docket No. 04-81-TR-Air Lake-Empire, that Judge Klein presided over. We believe that it is appropriate for you to be aware of certain generic comments submitted by the staff in these other proceedings and of the actions taken by the EQB Board in making findings and issuing permits for these other projects.

You can find the staff comment letters, the Board's findings and permits, and the administrative law judges' reports on the EQB webpage for these other projects. The webpage is www.eqb.state.mn.us.

The staff is not making a specific recommendation regarding a site permit at this time. The staff will ultimately make a recommendation to the EQB Board, but that will occur when the matter is brought to the Board for its final decision on a permit, after you have issued your report.

With those caveats in mind, we make the following comments to assist you in reviewing the record and preparing findings of fact and making a recommendation.

1. Applicable Rules.

The rules of the EQB that apply to this proceeding are found in Minn. Rules chapter 4400. The particular sections are parts 4400.2000 to 4400.2950, because this project – a large electric power generating plant fueled by natural gas – qualifies for alternative review under the Power Plant Siting Act. Minn. Stat. § 116C.575.

2. Procedural Requirements.

The statutes and rules establish a number of procedural requirements the EQB and the applicant must follow in processing the permit application. There are two areas where the notice that was provided was not in conformance with the statutory requirements. However, EQB staff believes that you can reasonably conclude that the EQB and the applicant made a good faith effort to comply with all notice requirements and did in fact provide adequate notice to interested persons at all stages of this proceeding

Minn. Stat. §§ 116C.57, subd. 2b and 116C.575, subd. 4, require that at the time the applicant submits its application to the EQB, the applicant is supposed to send a copy of the application by certified mail to any regional development commission, county, incorporated municipality, and township in which any part of the site is proposed. In this case, there is no regional development commission in the Cannon Falls area and the proposed site is within the city limits so no township is involved. The two governmental bodies that should have received a copy of the application by certified mail are the city of Cannon Falls and Goodhue County. Invenergy did mail the Notice of Application to both the city and the county. *See Exhibit 6.* There is no doubt that both the city and the county were aware of the application and had access to the application. The application was available at the Cannon Falls city offices and library and was posted on the EQB website. Additionally, governmental representatives of the city of Cannon Falls and of Goodhue County attended both the Public Informational Meeting on September 22 and the Public Hearing on December 1. Neither body complained about lack of notice or access to the application.

Minn. Stat. §§ 116C.57, subd. 2d and 116C.575, subd. 6, also require that notice of the public hearing be sent by certified mail to these same governmental bodies. The notice that was mailed out was sent by regular mail and not by certified mail. *See Exhibit 21.* This is harmless error because there is no question that these governmental bodies received notice of the hearing.

Several members of the public commented at the public hearing that there was not enough time to review documents and prepare for the public meeting and hearing. As explained at the hearing by staff, the time periods are established by the statutory mandate to complete the entire process within six months. Minn. Stat. §116C.575, subd. 7. The public also has the opportunity to file written comments with the judge and to appear before the EQB Board when it makes a final decision.

3. Environmental Assessment

The EQB has prepared an Environmental Assessment in this matter. The EQB rules provide that at the time the EQB makes a final decision on the permit, the Board should also determine whether the EA and the administrative record address the issues identified in the Chair's scoping decision (Minn. Rules part 4400.2950, subp. 2). While it is not necessary for you to make any recommendation regarding the Environmental Assessment, you may certainly elect to provide a recommendation on that point if you choose to do so.

4. Air Quality Impacts

While no person has registered any concerns about whether the Environmental Assessment addresses the matters identified in the scoping decision, there were comments raised at the hearing about the potential impacts of the proposed plant on air quality in the community. Mr. Joe Vandenhoevel, who commented at the hearing, reiterated his concerns about air quality impacts in his comment letter submitted on December 6. Invenergy is in the process of responding to these questions and concerns in written comments it will submit this week.

The staff addressed the matter of air quality impacts in the Environmental Assessment. The information was taken primarily from Invenergy's application to the Minnesota Pollution Control Agency for an air permit for the facility. That application was not introduced into the record during the hearing but information from the document was cited on several occasions. In order to ensure that the air permit application can be considered by the judge and the Board, the staff is submitting a copy of the application with this letter and requesting that the judge accept it into the record as Exhibit 33. In a proceeding of this type, it is appropriate for the judge to receive documents into the record during the comment period. (The staff did indicate at page 2 of the Environmental Assessment that the air permit application was the source of much of the information in the EA.) Importantly, the Pollution Control Agency will be submitting a letter into the record commenting on the permitability of this facility. The PCA will establish in the air permit the actual emission limitations and operational requirements that Invenergy will have to comply with.

As part of its permit application, Invenergy addressed emissions of both criteria pollutants – those for which the U.S. Environmental Protection Agency has promulgated national ambient air quality standards (sulfur dioxide, particulate matter, carbon

monoxide, and nitrogen oxides) – and hazardous air pollutants (HAPs) (sixteen different heavy metals and organic compounds).

Criteria Air Pollutants. For the criteria pollutants Invenergy used emission rates, meteorological information and background concentrations to predict the expected ground level concentrations in the surrounding area by computer modeling. The anticipated emissions of each of the criteria pollutants, under worse case scenarios assuming longer hours of operation on fuel oil than will be allowed under the PCA air permit, are shown in Table 2-5 of the air permit application. The meteorological data came from the station at Stanton. The background concentrations were estimated by the Minnesota Pollution Control Agency, and while no actual monitoring data exists for the City of Cannon Falls, it is normal practice to rely on modeled data for that information. Moreover, all of Goodhue County has been classified as an attainment area for all criteria pollutants by the PCA.

The predicted ground level concentrations were then compared to the National Ambient Air Quality Standards (NAAQS). The modeled criteria air pollutant concentrations for the Cannon Falls Energy Center are well below the established NAAQS. *See* Table 6 in the Environmental Assessment. (Incidentally, the entry in Table 6 for the ambient standard for carbon monoxide should read 40,000 micrograms per cubic meter, not 40,00. There is a zero missing.)

Hazardous Air Pollutants. With regard to hazardous air pollutants, (Congress identified in the Clean Air Act those chemicals that are hazardous, 42 U.S.C. § 7412(b)(1)), Invenergy estimates that at worse case (4,143 hours per year on natural gas and 753 hours on fuel oil), it will emit at the most approximately nine tons per year of the sixteen pollutants combined. These figures and explanation can be found in the air permit application at page 10 and Tables 2-6 and 2-7. Also, even though the Pollution Control Agency does not require it for a facility like this one, *see* Exhibit 26, Invenergy completed an Air Emission Risk Analysis (AERA), in which it estimated the risks associated with the chemicals that will be emitted. Using established protocols and the estimated emissions, the risks of cancer or other health effects are below the levels established by the Minnesota Department of Health and the U.S. Environmental Protection Agency. An explanation is found at page 30 of the Environmental Assessment and the data are presented in Table 12.

5. Site Permit

The EQB's task here is to identify a site for the 357 MW LEPGP proposed by Invenergy. The only site under review is the Cannon Falls site. In the Environmental Assessment, the EQB did not consider any other sites; the EQB only addressed the potential impacts of constructing the facility at the Cannon Falls site. Any site permit that is issued by the EQB in this proceeding for a large electric power generating plant will be for the Cannon Falls site. However, there are two other permits from the EQB that will be required for this project – a pipeline routing permit and a high voltage transmission line route permit.

Pipeline Permit

To supply natural gas to the facility, a lateral pipeline will be constructed that will connect the LEPGP to the existing Northern Natural Gas Company's (NNG) interstate pipeline. The pipeline lateral will originate at the 30-inch NNG mainline near Farmington, Minnesota, and extend approximately 12 miles southwest to the Cannon Falls Energy Center. Neither Invenergy nor the natural gas supplier has applied for a permit for the new pipeline as of this date, and that matter will be handled in a separate proceeding.

HVTL Route Permit

A new high voltage transmission line will be required to connect the new generating plant to the transmission grid. An existing 161 kV transmission line runs along the western boundary of the project site. This line is owned by Great River Energy. The line runs approximately 2 miles southwest to the Xcel Energy Cannon Falls substation. The proposed project will interconnect to the transmission system at this substation via one of two options. One option would reconfigure the existing 161 kV line to loop into a switching station that GRE would construct at the project site. The other option would be to construct a new 115 kV transmission line parallel along the existing Spring Creek – Cannon Falls line. Which option is chosen will be determined at a later date and addressed in a separate proceeding.

6. Permit Conditions.

Any Site Permit issued by the EQB will contain conditions. Many of these conditions are terms that are included in all permits issued by the EQB. A review of the recent permits issued by the EQB will show the kind of general conditions that have been included in the permits recently issued by the EQB.

Often, the EQB will also include certain special conditions in a Site Permit that are unique to the project being authorized. If there are any special conditions that you determine would be appropriate to include in the permit to be issued here, you can identify those in your report and explain the rationale for recommending them.

7. Certificate of Need

Through a bidding process approved by the Minnesota Public Utilities Commission (MPUC) in Northern States Power Company's resource planning process, Invenergy is obligated to provide all the electricity generated at the new facility to Xcel Energy. An electric power plant selected in a bidding process approved by the MPUC is exempt from the certificate of need process (Minn. Stat. § 216B.2422, subd. 5). Invenergy, therefore, will not be required to file for a certificate of need from the MPUC for the Cannon Falls Energy Center.

8. Timing

The EQB Board meets on the third Thursday of each month. The earliest this matter could be brought to the Board for a final decision is January 21, 2005. In order to place this matter on the January Board agenda, the staff would have to have the judge's report by no later than January 7, 2005. That date is unrealistic, given the fact that the record closes on December 13 and the holiday season occurs during the time the judge is writing her report. The February Board meeting will be held on 17, 2005. Having the judge's report in hand by February 1 would allow adequate time to prepare for the February Board meeting.

9. Recent EQB Permitting Decisions

You should be aware that in the last few months the EQB Board issued permits for three large power plants for which a public hearing was held and presided over by an administrative law judge.

On May 20, the Board adopted Findings of Fact, Conclusions, and Order and issued a site permit for a proposed new power plant in Faribault, Minnesota. That matter is OAH Docket No. 15-2901-15778-2 and Judge Beverly Jones Heydinger was the Administrative Law Judge. The EQB Docket Number is 02-48-PPS-FEP.

On June 17 the EQB Board issued a site permit to Xcel Energy for construction of two simple cycle turbines at the Blue Lake facility in Scott County. The judge in that case was Judge Raymond R. Krause. That matter is OAH Docket No. 2-2901-15938-2. The EQB Docket Number is 04-75-PPS-Xcel.

On September 16, 2004, the EQB Board issued a site permit to Mankato Energy Center, LLC, a subsidiary of Calpine Corporation, for construction of a combined cycle, natural gas power plant in Blue Earth County. The judge in that case was Allan W. Klein. That matter is OAH Docket No. 6-2500-15869-2. The EQB Docket Number is 04-76-PPS-Calpine.

In addition, the EQB has in the past few months issued several route permits for new transmission lines. The above three power plants have short transmission lines that were permitted to allow the plant to connect to the grid. Other route permits recently issued by the EQB are identified at the beginning of this letter.

These documents are also available on the EQB webpage: <http://www.eqb.state.mn.us/>. Review of these documents may be of assistance to you with regard to certain generic issues and with regard to the format the EQB has developed for findings and permits. Of course, any specific issues relating to either of these two projects have no applicability to the Cannon Falls Energy Center project.

In conclusion, we hope that this discussion is helpful to you in reviewing the record and preparing your report and recommendation. We will serve a copy of this letter upon Invenergy and upon those persons who are on the EQB Project Contact List. We will also post it on the EQB webpage. In addition, if other written comments are filed with you by the end of this week (December 10), staff will attempt to submit a response on December 13.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Alan Mitchell". The signature is written in a cursive, flowing style.

Alan Mitchell

cc: Matt Seltzer, Leonard, Street & Deinard
Joel Schroeder, Invenergy Cannon Falls, LLC